

UNITED STATES DISTRICT COURT
for
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

U.S.A. vs. Sylvester Kirkland

Docket No. 5:11-MJ-1761-1

Petition for Action on Probation

COMES NOW Debbie W. Starling, probation officer of the court, presenting a petition for modification of the Judgment and Commitment Order of Sylvester Kirkland, who, upon an earlier plea of guilty to Driving While Impaired (Level 4), in violation of 18 U.S.C. §13, assimilating N.C.G.S. 20-138.1, was sentenced by the Honorable James E. Gates, U.S. Magistrate Judge, on July 11, 2012, to a 12 month term of probation under the standard conditions adopted by the court and the following additional conditions:

1. The defendant shall perform 48 hours of community service as directed by the probation office and if referred for placement and monitoring by the State of North Carolina, pay the required \$200 fee.
2. The defendant shall participate as directed in a program approved by the probation office for the treatment of narcotic addiction, drug dependency, or alcohol dependency which will include urinalysis testing or other drug detection measures and may require residence or participation in a residential treatment facility.
3. The defendant shall abstain from the use of any alcoholic beverages, shall not associate with individuals consuming alcoholic beverages, shall not frequent business establishments whose primary product to the consumer is alcoholic beverages, and shall not use any medication containing alcohol without the permission of the probation office or a prescription from a licensed physician.
4. The defendant shall obtain a substance abuse assessment from an appropriate mental health facility within thirty (30) days from the date of this judgment and complete any prescribed treatment program. The defendant must pay the assessment fee and any added treatment fees that may be charged by the facility.
5. It is further ordered that the defendant shall participate in any other Alcohol/Drug Rehabilitation and Education program as directed by the U.S. Probation Office.
6. The defendant shall surrender his North Carolina driver's license to the Clerk of this Court for mailing to the North Carolina Division of Motor Vehicles and not operate a motor vehicle on the highways of the State of North Carolina except in accordance with the terms and conditions of a limited driving privilege issued by the appropriate North Carolina Judicial Official.

On September 17, 2012, the defendant's conditions of supervision were modified to include 120 days of Remote Alcohol Monitoring (and curfew) as a result of alcohol use. On October 16, 2012, and November 7, 2012, the court was notified of the defendant's alcohol use on October 14, 2012, and November 1, 2012. His supervision was continued based upon his participation in intensive outpatient counseling through the VA Medical Center and application for admission to inpatient treatment. On December 4, 2012, his conditions were modified to extend Remote Alcohol Monitoring (and curfew) for the duration of his supervision, as well as 48 hours of community service as sanctions for driving while his license is revoked and alcohol use. On February 24, 2012, the court was notified of an elevated alcohol reading for which the defendant attributed to the use of cold medication. His supervision was continued.

RESPECTFULLY PRESENTING PETITION FOR ACTION OF COURT FOR CAUSE AS FOLLOWS: On June 10, 2013, the defendant submitted to alcohol testing as part of the Remote Alcohol Monitoring Program. The test yielded an alcohol reading of .043 BAC. The defendant admits consuming alcohol that evening. This defendant has participated in all available substance abuse treatment programs offered through the VA Medical Center, to include a 35-day inpatient residential care program which he completed successfully in January 2013. He recently completed the 90/90 program (90 AA meetings in 90 days). Kirkland stated that he continues to attend support meetings as he is able to do so. The defendant is awaiting completion of his supervision term (July 10, 2013), and will be considered for the 45-day inpatient PTSD program in Salisbury, NC, through the VA Medical Center. He has expressed regret for his relapse, and realizes he is at the court's mercy at this time. Based upon these factors, it is respectfully recommended that the defendant serve five days in jail as a punitive sanction for his alcohol use.

The defendant signed a Waiver of Hearing agreeing to the proposed modification of supervision.

PRAYING THAT THE COURT WILL ORDER that probation be modified as follows:

1. The defendant shall be confined in the custody of the Bureau of Prisons for a period of five days and shall abide by all rules and regulations of the designated facility.

Except as herein modified, the judgment shall remain in full force and effect.

Reviewed and approved,

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Robert L. Thornton
Robert L. Thornton
Supervising U.S. Probation Officer

/s/ Debbie W. Starling
Debbie W. Starling
U.S. Probation Officer
310 Dick Street
Fayetteville, NC 28301-5730
Phone: (910) 483-8613
Executed On: June 13, 2013

ORDER OF COURT

Considered and ordered this 14th day of June, 2013, and ordered filed and made a part of the records in the above case.


James E. Gates
United States Magistrate Judge